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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/717,098

11/19/2003

Donald Carroll Roe

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03/31/2008

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

03/31/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/717,098

Applicant(s)

ROE, DONALD CARROLL

Examiner

Jacqueline F. Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/17/08.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/CB/CIC)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/17/08 has been entered.

Response to Arguments

2. Applicant's arguments filed 1/17/08 have been fully considered but they are not persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the fecal material storage element extends contiguously across the longitudinal axis of the absorbent article) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). As the Examiner has previously stated, the fecal storage element 25 of Mason has laterally opposing longitudinal edges disposed on either side of the longitudinal axis as seen in Figure 5. Each panel 25 extends contiguously between the longitudinal side edges. Both panels comprise the fecal storage element, the claims do not require a single fecal storage element, neither do the claims require the element

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extend contiguously from one side of the diaper to the other side of the diaper, just that the fecal storage element extend contiguously between the longitudinal side edges. Each separate panel extends contiguously between the longitudinal side edges.

Claim Rejections - 35 USC § 102/103

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3, 5-11, and 14 are rejected under 35 U.S.C. 102(b) or in the alternative under 35 U.S.C. 103(a) as being unpatentable over Mason USPN 3559648.

Regarding claims 1, 8, 9, and 14, Mason comprises a topsheet 33, a backsheet 34, and a fecal material storage element (pad 10 at area 25) intermediate the topsheet and backsheet, and an absorbent core 10 intermediate the fecal material storage element and backsheet (Figure 5). The fecal storage element 25 of Mason has laterally

opposing longitudinal edges disposed on either side of the longitudinal axis as see in Figure 5. Each panel 25 extends contiguously between the longitudinal side edges. The fecal storage element has two major faces, a first major face (examiner has designated as F1) oriented towards the topsheet and a second major face (examiner has designated as F2) oriented towards the backsheet. Mason does not specifically disclose a trans-topsheet capacity greater than about 0.20 grams per square inch. However, the specification of the present invention on page 6, lines 1-22; page 7, line 16 through page 8, line 20; page 11, lines 5-7; and page 12, line 30 through page 13 line 29 sets forth the size of apertures in the topsheet and materials for the topsheet and fecal storage element necessary to obtain the desired trans-topsheet capacity. Mason at col. 1, lines 29-40 and lines 53-61; col. 2, lines 6-8, 23-27, 55-74; and col. 3, lines 4-19 teaches similar materials and apertures sizes for the fecal storage element and topsheet. Therefore, Mason inherently includes the claimed trans-topsheet capacity. When the structure recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions are presumed to be inherent (MPEP 2112-2112.01). A *prima facie* case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim except a property or function and the examiner can not determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof as in *In re Fitzgerald*, 619 F.2d 67, 70 205 USPQ 594, 596 (CCPA 1980). In the present case, the reference has met the structural requirements of claim 1.

Regarding claim 3, see, col. 1, lines 34-35 and col. 2, lines 54-56.

Regarding claims 5, the fecal material storage element comprises a cellulosic fibrous structure (col. 2, lines 6-9).

Regarding claim 6, Mason discloses the aperture side in the topsheet ranges from 0.25 to 0.5 square inches (col. 3, lines 12-15), which includes the range of at least 0.3 square mm.

Regarding claim 7, the absorbent article of Mason is a three-dimensional structure. Even if the article was substantially flattened under pressure, it would still be considered a three-dimensional structure.

Regarding claims 10 and 11, Mason teaches the topsheet can have substantially large apertures and apertures of varying sizes, especially in a central region in order to allow semisolid waste material to penetrate to the absorbent layers. Mason does not disclose the exact area of the article having the trans-topsheet capacity. However, Mason recognizes the area having large apertures can be varied and this will affect the ability of the article to hand fecal material (col. 1, lines 53-56, col. 3, lines 4-19). Mason, therefore recognizes the ability to handle fecal material is a result effective variable of size and distribution of the apertures in the topsheet. It would have been obvious to one of ordinary skill in the art to provide the article with the claimed area of trans-topsheet capacity, since discovering an optimum value of a result effective variable involves only routine skill in the art.

6. Claims 2, 4, 12, 13, and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mason in view of Matthews et al. USPN 4397644.

Regarding claims 4, 12, 17, and 20, Mason discloses the present invention substantially as claimed, see discussion supra. However, Mason fails to disclose the topsheet is bonded to the fecal material storage element at discrete sites. Matthews discloses an absorbent article comprising an apertured topsheet and absorbent layer 14a (col. 3, lines 41-45 and col. 5, lines 25-50) capable of storing low viscosity fecal material. Matthews discloses the integration of the topsheet and fecal storage element is at discrete bond sites of up to 2 cm apart (col. 3, lines 56-63), which is included in the range of 0.5-7.6 cm. It would have been obvious to one of ordinary skill in the art at the time the invention was made to bond the topsheet and fecal material storage element of Mason at discrete sites leaving open areas in the range taught by Matthews. Doing so would provide sufficient integration of the topsheet and fecal material storage element without creating an unpleasantly stiff diaper, which Matthews teaches is to be avoided (col. 5, lines 6-24).

Regarding claims 2 and 18, Mason discloses the present invention substantially as claimed. However, Mason does not disclose the topsheet is treated to be hydrophilic. Matthews teaches an absorbent article in which the topsheet is treated to be hydrophilic (col. 4, lines 19-21). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the topsheet of Mason to be

hydrophilic as taught in Matthews. Doing so would provide a means for improving the flow of fluids to the storage element.

Regarding claim 19, see, '648 col. 1, lines 34-35 and col. 2, lines 54-56.

7. Claims 13, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mason in view of Matthews as applied to claim 4 above and further in view of Jones USPN 3593717 and further in view of Meyer USPN 4798603.

Regarding claim 13, Mason/Matthews shows the fecal material storage element comprises blind holes ('644 Figures 2-4 and col. 4, lines 19-22). However, Mason/Matthews do not disclose the depth of the holes. Jones teaches an absorbent article comprising an apertured topsheet and an absorbent layer (Figures 1-5c, col. 2, lines 27-66 and col. 3, lines 1-9 and 17-51) capable of storing low viscosity fecal material comprising blind holes having a depth of at least 0.75 mm (col. 4, lines 63-71). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apertures of Mason/Matthews to have a depth of at least 0.75 mm as taught in Jones. Doing so would provide a fecal storage element capable of receiving low viscous fluids without leaking.

Mason/Matthews/Jones fails to disclose the depth exist while the storage element is under a load of 31.6 grams per square centimeter. Meyer discloses an apertured layer 18 capable of storage low viscosity material (col. 7, line 63 through col. 8, line 21) that is capable of resiliently compressing during normal use at a pressure of 0.2-0.5 psi (14.06-35.15 g/cm²) approximately that which is normally applied during use

by the wearer (col. 10, lines 46-52). It would have been obvious to one of ordinary skill in the art to modify the invention of Mason/Matthews/Jones to maintain the blind-hole depth at the compression level taught by Meyer. Doing so would provide a fecal management element capable of maintaining its dimensions during use.

Regarding claim 15, Mason/Matthews/Jones/Meyer discloses the present invention substantially as claimed; see discussion supra, except for at least fifty percent of the surface area of the second major surface of the fecal storage element being bonded to the core. However, Mason/Matthews/Jones/Meyer recognizes the amount of contact between the fecal storage element and absorbent core can be varied and this will affect the fluid transfer communication from the transport layer to the absorbent body ('603 col. 6, line 64 through col. 7 line 3). Mason/Matthews/Jones/Meyer, therefore recognizes the ability to handle fecal material is a result effective variable of the bonding between the topsheet, fecal storage element and absorbent core. It would have been obvious to one of ordinary skill in the art to provide the article with the claimed percentage of bonding, since discovering an optimum value of a result effective variable involves only routine skill in the art.

Regarding claim 16, the rejection of claims 10 and 11 also applies here.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jacqueline F Stephens/
Primary Examiner, Art Unit 3761

March 27, 2008